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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,217	02/25/2002	Masahiko Takashima	396.41186X00	2842

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EXAMINER

WOODWARD, ANA LUCRECIA

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 08/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 2/25/02, 8/7/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-11 is/are pending in the application.
- ☐ Of the above claim(s) is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 1-11 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☒ Some\* ☐ None of the:
  - ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 3
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear as to whether or not the presence of the phosphorus compound is required. In this regard, it is noted that zero per cent of P fulfills the " $\leq 25$ " requirement of formula (1).

### *Claim Rejections - 35 USC 102/103*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6, 8, 9 and 11 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. 6,444,283 (Turner et al) in view of U.S. 6,103,857 (Jones et al).

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Turner et al disclose polyester-polyamide blends with reduced gas permeability and low haze comprising semi-crystalline polyester, such as PET, with low molecular weight polyamides and containers and packages fabricated therefrom. Suitable polyesters include polyesters prepared by polycondensation with catalysts, such as antimony (page 10, second paragraph). Preferably, the amount of catalyst added is from about 20 to about 300 ppm when antimony is used. As for the polyamide, poly(m-xylylene adipamide) is preferred.

Turner et al exemplify various compositions and articles therefrom prepared from a PET 9921 and MXD6 blend. It is reasonably believed that the PET 9921 material meets the antimony concentration of the present claims. In this regard, attention is directed to Jones et al's disclosure of PET 9921 as an example of polyesters having about 90 to 150 ppm of antimony catalyst (column 3, lines 16-22 coupled with example 3). It is reasonably believed that the compositions and articles disclosed by Turner et al meet the requirements of the present claims both in terms of the types of materials added and their contents. The onus is shifted to applicants to establish that the products of the present claims are not the same as or obvious from those set forth by the reference.

The above-rejection pertains to the embodiment of the present claims wherein the polyamide does not contain any phosphorus compound, i.e., when P equals zero.

***Claim Rejections - 35 USC § 103***

5. Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,444,283 (Turner et al) in view of U.S. 6,103,857 (Jones et al) as applied hereinabove further in view of EP 0301719.

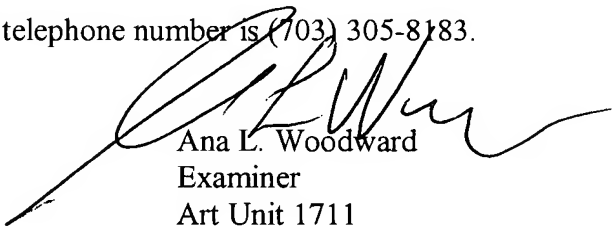
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In essence, the disclosure of Turner et al differs from the above-rejected claims in not expressly exemplifying the thickness of the formed articles. In light of the similar-such disclosure of EP '719, it would have been obvious to one having ordinary skill in the art to have prepared performs, films and bottles of Turner et al in any desired thickness, inclusive of a thickness falling within the scope of the present claims. Accordingly, absent evidence of unusual or unexpected results, no patentability can be seen in the claimed subject matter.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana L. Woodward whose telephone number is (703) 308-2401. The examiner can normally be reached on Monday-Friday (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on (703) 308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-8183.



Ana L. Woodward  
Examiner  
Art Unit 1711

AW  
July 31, 2003